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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

ISRAEL BAEZA-MORENO,  
Petitioner,  
vs.  
UNITED STATES OF AMERICA,  
Respondent.

CASE NOS. 11-CV-1720 BEN  
11-CR-797 BEN

**ORDER DENYING  
28 U.S.C. § 2255 MOTION**

Petitioner Israel Baeza-Moreno moves pursuant to 28 U.S.C. § 2255 for a reduction in his sentence based on his alien status and challenges Bureau of Prisons' policies which preclude him from participating in certain pre-release programs. Both because he waived the right to challenge his sentence and because his Equal Protection argument lacks merit, the Court **DENIES** the motion.

**DISCUSSION**

**I. WAIVER**

The Ninth Circuit recognizes strong public policy considerations justifying the enforcement of a defendant's waiver of his right to appeal or collaterally attack a judgment. *United States v. Novarro-Botello*, 912 F.2d 318, 321 (9th Cir. 1990). Waivers play an important role in the plea bargaining process and help ensure finality. *Id.* at 322. Generally, courts enforce a defendant's waiver of his right to appeal, as long as the waiver was "knowingly and voluntarily made" and "encompasses the

1 defendant's right to appeal on the grounds claimed on appeal." *United States v. Nunez*,  
2 223 F.3d 956, 958 (9th Cir. 2000) (quoting *United States v. Martinez*, 143 F.3d 1266,  
3 1270-71 (9th Cir. 1998)).

4 Petitioner waived his right to collaterally attack his sentence in his plea  
5 agreement. Plea Agreement (Docket No. 17) ¶ 11. The plea agreement states,  
6 "defendant waives, to the full extent of the law, any right to appeal or to collaterally  
7 attack the guilty plea, conviction and sentence." *Id.* Petitioner's knowing and  
8 voluntary waiver of his right to collaterally attack his sentence requires denial of his  
9 § 2255 motion.

## 10 II. EQUAL PROTECTION

11 Petitioner filed the present motion under 28 U.S.C. § 2255, but his Equal  
12 Protection challenge to the constitutionality of certain Bureau of Prisons' policies is  
13 better construed as a challenge to the manner in which his sentence is being executed  
14 under 28 U.S.C. § 2241. *See Hernandez v. Campbell*, 204 F.3d 861, 864 (9th Cir.  
15 2000) (per curiam) (instructing that petitions challenging the "manner, location or  
16 conditions of a sentence's execution must be brought pursuant to § 2241"); *see also*  
17 *Montano-Figuero v. Crabtree*, 162 F.3d 548, 549 (9th Cir. 1998) (illustrating that  
18 challenges to Bureau of Prisons' policies are challenges to the execution of an inmate's  
19 sentence). Construing his motion liberally, the Court considers Petitioner's Equal  
20 Protection claim under 28 U.S.C. § 2241. *See Zichko v. Idaho*, 247 F.3d 1015, 1020  
21 (9th Cir. 2001) (noting a court's "duty to construe pro se pleadings liberally").

22 Petitioner claims that Bureau of Prisons' policies that prevent him from  
23 participating in certain programs due to his alien status violate his right to Equal  
24 Protection. However, Bureau of Prisons policies preventing deportable aliens from  
25 participating in certain programs survive constitutional challenge. *Cf. McLean v.*  
26 *Crabtree*, 173 F.3d 1176, 1186 (9th Cir. 1999) (finding BOP exclusion of prisoners  
27 with detainers, including INS detainers, from community-based program based on  
28 petitioners' alien status did not violate Equal Protection).

The Court **DENIES** a certificate of appealability because the issues are not debatable among jurists of reason and there are no questions adequate to deserve encouragement.

Petitioner's motion is **DENIED**. The Clerk shall close case number 11-CV-1720  
BEN.

DATED: November 25, 2013

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